IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 312 of 1997
To
FIRST APPEAL No. 323 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAND ACQUISITION OFFICER AND OTHERS
Versus
DOLATSINH HARISINH KATHVADIYA

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Appearance :
MR ND GOHIL, AGP for Appellants.
MR KM SHETH for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 10/07/2006

COMMON ORAL JUDGMENT

By filing these appeals under Section 54 of the Land Acquisition Act read with Section 96 of the Civil Procedure Code, the appellants, i.e. Special Land Acquisition Officer, (Irrigation Project), Unit No.3, Bharuch

as well as Executive Engineer of the said Irrigation Project have challenged the judgement and award rendered by the learned Assistant Judge, Bharuch in Land Reference Cases Nos.1436/1990 to 1447/1990 on 8-8-1996. By the aforesaid judgement, learned Judge of the Reference Court has partly allowed all the aforesaid references of the claimants and fixed the value of the land under acquisition at the rate of Rs.450/- per Are.

On behalf of the State and Land Acquisition Officer a proposal was initiated for the purpose of acquiring certain agricultural lands of village – Bhilod, Taluka – Valia, District – Bharuch for Karjan Irrigation Scheme. The land in question was acquired for the purpose of construction of canal for the said project. Various agricultural lands were sought to be acquired and for that purpose notification under Section 4 was issued on 31st December, 1987. Subsequently, the same was followed by notification under Section 6. Thereafter, the Land Acquisition Officer issued notice under Section 9 and after considering the say of the claimants, Land Acquisition Officer awarded Rs.160/- per Are by giving award in Land Reference Case No.62/1987. The Land Acquisition Officer declared his award on 31-12-1989. Thereafter, dissatisfied claimants have requested for making reference under Section 18 of the Land Acquisition Act and the claimants demanded Rs.750/- per Are. The Special Land Acquisition Officer, accordingly made references to the District Court. Said reference were numbered as Land Reference Case Nos.1436/1990 to 1447/1990.

Evidence was led in Land Reference Case No.1436/1990, which was treated as a main case. Learned judge of the Reference Court disposed of all the aforesaid land reference cases by a common judgement. All the aforesaid land references were partly allowed and the

learned Judge fixed the value of the land at the rate of Rs.450/- per Are in connection with the lands in question. Learned judge also granted consequential benefits of solatium, interest etc., as per the provisions of the Land Acquisition Act.

Being dissatisfied with the aforesaid order of the Reference Court, these appeals have been filed on behalf of the Land Acquisition Officer as well as on behalf of the acquiring body.

Mr.N.D.Gohil, learned AGP appearing for the appellants submitted that the learned Judge of the Reference Court has committed an error in fixing the valuation of the land at the rate of Rs.450/- per Are. He further submitted that in the facts and circumstances of the case, the amount awarded by the Special Land Acquisition Officer at the rate of Rs.160/- per Are was proper valuation of the land in question and the said amount reflects the correct price of the land at the time of issuance of notification under Section 4 of the Act. However, learned AGP submitted that on behalf of the acquiring body, no sale instances are produced nor any other documentary evidence is produced on record.

On the other hand, Mr.Sheth, learned advocate for the respondents submitted that except four cases, the additional amount awarded by the trial Court is less than Rs.25,000/- and only in four cases, it exceeds Rs.25,000/- but in those cases also, maximum amount awarded is Rs.43,737.60 ps. Mr.Sheth has relied upon the decision of this Court, wherein it is held that if the claim is of small amount, in First Appeal this Court would not like to interfere with the judgement of the Reference Court. He submitted that in some of the cases this Court has held that if the amount awarded is upto Rs.25,000/- then it should be considered as petty amount and considering the smallness of the

amount, the Court may not interfere with the judgement of the Reference Court in First Appeal.

Since all these appeals are for final hearing, instead of considering the amount in question, these matters are required to be considered on its own merits.

Mr.N.D.Gohil, learned AGP has frankly submitted that on behalf of the Land Acquisition Officer, neither sale deed nor sale instances are produced on record. He submitted that except relying upon the decision of the Land Acquisition Officer, it is not possible for him to attack the judgement of the Reference Court.

Since Record and Proceedings is available before this Court, I have considered the oral and documentary evidence produced before the Reference Court. On behalf of the claimants, one Surendraprasad Gajanand Pandya has given evidence at Exh.12. The said claimant in his evidence has stated that the amount fixed at the rate of Rs.160/- per Are is too low and appropriate valuation should have been made at the rate of Rs.750/- per Are. In his evidence, on behalf of the claimants, witness had stated that land in question is very fertile land. On behalf of the claimants, sale instance at Exh.13 is produced on record. So far as said sale instance is concerned, it is in connection with sale of agricultural land of Village – Vagalkhod, Taluka – Valia. The owner of the said land sold aforesaid land for Rs.40,500/- and as per the recital of the said sale deed, amount was fixed at the rate of Rs.18,000/- per Acre. Said Sale deed is dated 21st January, 1986, though the agreement of sale had taken place on 28th April, 1972. Accordingly, said document was registered in the year 1986.

It is pointed out by both the learned advocates that if the valuation is to be considered as per the aforesaid document, it would come to Rs.450/- per Are. Sale deed of the aforesaid document, as noted earlier, had taken place on 21st January, 1986. It is as such not in dispute that village – Vagalkhod and village – Bhilod are adjoining to each other (land in question is situated at village – Bhilod) and in the instant case, notification under Section 4 was issued on 31-12-1987. The claimants' witness Surendraprasad Gajanand Pandya has stated in his evidence that the distance between aforesaid land at Exh.13 and the acquired land is very negligible, as there are hardly four to five agricultural lands situated in between. On behalf of the appellants, there is no dispute on this aspect.

On behalf of the claimants, reliance was also placed on Exh.14 before the Reference Court, which is an award declared by the Land Acquisition Officer in Land Acquisition Case No.1/1986. In that case, certain agricultural lands of village – Valia were acquired and the amount per Are was fixed at Rs.494.15 ps. Mr.Sheth, learned advocate for the respondents submitted that in the present case also, the amount should have been fixed at Rs.494.15 ps., as awarded by the Land Acquisition Officer in Land Acquisition Case No.1/1986.

However, in my view, learned Judge of the Reference Court has rightly not relied upon the same, as the aforesaid award was consent award and land in that case was acquired on behalf of a Corporation, namely, Gujarat Narmada Valley Fertilizer Company Limited. Since it was a consent award and since the company seems to be in urgent need of the land in question, perhaps an agreed amount was paid to the claimants and accordingly, consent award was declared. Therefore, no reliance can be placed to the consent award at exh.14 on which the

claimants have relied before the Reference Court.

It seems that the possession of the land in question was taken much earlier, which followed notification under Section 4 at a later point of time. Except the aforesaid documents at Exh.13 and 14, there are no other sale instances, which are tendered in evidence by either side before the Reference Court.

As observed earlier, so far as land at village – Valia is concerned, by consent an amount of Rs.494.15 ps. was given and therefore, the same cannot be taken as basis.

In the impugned judgement in paragraph 7, learned trial Judge has observed that Land Acquisition Officer has awarded Rs.300/- per Are in connection with the land at village – Valia, which is situated just adjoining to the acquired land. It seems that there is a mistake in observing the same, because as per the document at Exh.14 an amount of Rs.494.15 ps. is awarded by the Land Acquisition Officer. Learned trial Judge has rightly relied upon Exh.13, which is the only comparable evidence on record, and there is no other evidence produced by either side. As per the document at Exh.13, land of village – Vagalkhod is sold by owner of the land on 21-1-1986 and the amount per Are was fixed at Rs.450/-. Therefore, reliance is rightly placed by the learned Judge on document at Exh.13.

It has also come in the evidence of Surendraprasad Pandya that the acquired land is at a very short distance from the land of village – Vagalkhod, sale instance of which is produced at Exh.13 and the learned Judge has relied upon it. So far as land of Village – Vagalkhod is concerned, sale deed of that land had taken place on 21st January, 1986,

while in the instant case, notification was issued on 31st December, 1987, i.e., after more than one year and ten months. However, learned Judge has fixed the same price i.e., Rs. 450/- per Are even though one year and ten months have passed after the said transaction. As stated earlier, except aforesaid two documents, i.e., (i) consent award - Exh.14 and (ii) sale instances at Exh.13, no other sale instance is produced on record and learned AGP has also frankly conceded to the aforesaid fact.

Considering the aforesaid aspect of the matter and considering the fact that both the lands, i.e., land at village – Vagalkhod and land under acquisition are practically adjoining to each other and there is a very short distance between aforesaid two lands, in my view, valuation fixed by the learned trial Judge for the land in question is just and proper and learned AGP is also not in a position to attack the impugned judgement in order to support his say how the valuation of the land in question is on higher side.

Considering the aforesaid aspect of the matter, judgement and order of the Reference Court is not required to be disturbed by this Court in the present First appeals, as after considering the sale instances and oral evidence on record, learned trial Judge has fixed the price of the acquired land.

In view of what is stated herein above, all these First Appeals are devoid of merits. Hence, all these First Appeals are dismissed with no order as to costs.

Record and Proceedings to be sent back.

At this stage, Mr.Sheth, learned advocate for the respondents

submitted that in view of the pendency of these appeals amount awarded by the trial Court is not given to the claimants and it is still lying in Fixed Deposits. If that be so, now the claimants would be entitled to withdraw the amount awarded by the trial Court in view of the dismissal of these First Appeals.

(P.B.MAJMUDAR, J.)

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